

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

**SBARRO FRANCHISE CO LLC, *et al.*,**

**Plaintiffs,**

**v.**

**Civil Action 2:20-cv-267  
Judge Sarah D. Morrison  
Chief Magistrate Judge Elizabeth P. Deavers**

**PIZZA PARTNERS OPERATIONS, LLC, *et al.*,**

**Defendants.**

**ORDER**

This matter is before the Court for consideration of Plaintiffs' Motion for a Finding that Defendants Were Properly Served or, in the Alternative, Motion for an Extension of Time to Serve Defendants. (ECF No. 18.) Plaintiffs filed this action on January 17, 2020. (ECF No. 1.) On March 10, 2020, the Clerk filed a Certificate of Mailing representing that a copy of the Summons and Complaint was sent to each Defendant by certified mail. (ECF No. 11.) Summons was returned unexecuted as to each Defendant. (ECF Nos. 12, 13.) On April 8, 2020, the Clerk filed a Certificate of Mailing indicating that a copy of the Summons and Complaint was sent to each Defendant by ordinary mail. (ECF No. 14.) Postal authorities have not returned the ordinary mail envelopes.

The Federal Rules of Civil Procedure provide that service of process in a federal district court may be completed by "following state law for serving summons in an action brought in courts of general jurisdiction in the state where the district court is located." Fed. R. Civ. P. 4(e)(1). The Ohio Rules of Civil Procedure permits service by ordinary mail if certified or

express mail is returned as unclaimed. Ohio R. Civ. P. 4.6(D). Under that rule, “[s]ervice shall be deemed complete when the fact of mailing is entered of record, provided that the ordinary mail envelope is not returned by the postal authorities with an endorsement showing failure of delivery.” *Id.* This Court’s Local Rules set out this process as follows:

If the attorney of record or the serving party, after notification, files with the Clerk a request for ordinary mail service accompanied by an envelope containing the summons and complaint or other document to be served with adequate postage affixed to the envelope, the Clerk shall send the envelope to the defendant at the address set forth in the caption of the complaint or at the address set forth in instructions to the Clerk. The attorney of record or the serving party shall also prepare for the Clerk’s use a certificate of mailing that shall be signed by the Clerk or a Deputy Clerk and filed at the time of mailing. The attorney of record or the serving party shall also endorse the answer day (twenty-one days after the date of mailing shown on the certificate of mailing) on the summons sent by ordinary mail. If the ordinary mail is returned undelivered, the Clerk shall promptly notify the attorney of record or the serving party electronically or by mail.

S.D. Ohio Civ. R. 4.2(c).

Here, service on Defendants was complete on April 8, 2020, the date the Clerk entered the fact of mailing on the record. Fed. R. Civ. P. 4(e)(1); Ohio R. Civ. P. 4.6(D); S.D. Ohio Civ. R. 4.2(c). Accordingly, Plaintiffs’ Motion (ECF No. 18) is **GRANTED**. Defendants’ responsive pleadings are consequently due April 29, 2020.

**Date: April 27, 2020**

/s/ Elizabeth A. Preston Deavers  
**ELIZABETH A. PRESTON DEAVERS**  
**CHIEF UNITED STATES MAGISTRATE JUDGE**